Ramalingam a/l Rasaratnam v Sellam w/o Nadarajan

HIGH COURT (SEREMBAN) — ORIGINATING SUMMONS NO 24–728 OF 2003
LOW HOP BING J
16 FEBRUARY 2004

Land Law — Restraints on dealings — Caveats — Application for removal of caveat — Caveat lodged by defendant purchaser — Plaintiff a discharged bankrupt but land vested in Director-General of Insolvency — Locus standi — Whether plaintiff has locus to apply for removal — "Any person … aggrieved" — National Land Code s 327

Land Law — Restraints on dealings — Caveats — Application for removal of caveat — Test for — Whether purchaser has a caveatable interest — Whether there were serious questions to be tried — Whether caveat to remain on a balance of convenience or justice

The plaintiff and defendant entered into a sale and purchase agreement for a piece of land whereby the defendant duly paid RM1,850 to the plaintiff. Subsequently, the plaintiff was adjudicated as a bankrupt and the defendant filed a proof of debt for the amount.

After 11 years, plaintiff took steps to discharge himself as a bankrupt by settling all the debts. However, defendant refused to accept on the ground that it was insufficient. The Director General of Insolvency ('DGI') made a discharge order in favour of the plaintiff. Therefore, the defendant entered a private caveat and filed a civil suit for specific performance. Presently, the land is in the name of the DGI and not in the plaintiff's name. The issues to be determined were as follows: (i) whether the plaintiff has locus standi to file the application to remove the private caveat; and (ii) whether the private caveat should be removed.

Held, dismissing the application:

(1) The term 'any person aggrieved' stated in s 327(1) of the National Land Code ('the NLC') is sufficiently wide to include any person who is a registered owner of the land, but must be an aggrieved person. The plaintiff herein was the original registered owner whose land was vested in the DGI on the ground of his being adjudicated as a bankrupt but had not been re-registered as the owner, as a result of which the land at least in equity was vested in the defendant. As such, the plaintiff was a person aggrieved by the existence of the private caveat and therefore had the locus standi to apply to the court for an order for its removal (see paras 27–29).

(2) The defendant was one of the beneficiaries to the land pursuant to the sale and purchase agreement. Section 323(1)(b) of the NLC enables the entry of a caveat by any person claiming to be beneficially entitled under any trust affecting any such land. Since a valid agreement existed for the sale of land, the purchaser was entitled to lodge a caveat to protect his rights under the contract and to sue for specific performance of the agreement. Thus, the defendant had a caveatable interest (see paras 33–35 and 38).

(3) The defendant's claim raised a serious question to be tried as there was an issue as to whether the agreement was specifically enforceable in order to entitle the defendant to the equitable remedy of specific performance (see para 39).

(4) In order to maintain the substratum and subject matter of the civil suit, clearly the balance of convenience or justice lies in favour of the caveat remaining on the register pending the final disposal of the civil suit. Therefore, the defendant had a caveatable interest in the land (see para 40).

[**Bahasa Malaysia summary**

Plaintif dan defendan telah membuat satu perjanjian jualbeli di mana pihak defendan telah membayar plaintif sebanyak RM1,850 untuk sebidang tanah. Berikutan itu, plaintif telah dihukum bankrap dan defendan memfailkan bukti hutang untuk bayaran tersebut.

Selepas 11 tahun, plaintif mengambil tindakan untuk melepaskan dirinya sebagai seorang bankrap dengan menyelesaikan kesemua hutangnya. Walau bagaimanapun, defendan enggan menerima atas alasan bayaran tersebut tidak mencukupi. Ketua Pengarah Ketaksolvenan ('KPK') membuat perintah pelepasan bagi pihak plaintif. Oleh demikian, defendan memasuki kaveat persendirian dan juga mengambil tindakan sivil untuk perlaksanaan spesifik. Kini, tanah tersebut adalah atas nama KPK dan bukannya plaintif. Isu-isu yang perlu dipertimbangkan adalah berikut: (i) sama ada plaintif mempunyai locus standi untuk memfailkan permohonan supaya kaveat persendirian dibatalkan; dan (ii) sama ada kaveat persendirian harus dibatalkan.

Diputuskan, menolak permohonan:

(1) Istilah 'any person aggrieved' yang terkandung dalam s 327(1) Kanun Tanah Negara ('KTN') adalah cukup luas untuk memasukkan sesiapapun yang merupakan pemilik berdaftar. Dalam kes ini, walaupun plaintif adalah pemilik daftar asal tanah tersebut tetapi oleh kerana beliau telah dihukum bankrap KPK diberikuasa ke atas tanah tersebut. Lagipun, plaintif belum mendaftar semula tanah tersebut ke atas namanya. Berdasarkan itu, defendan mempunyai kepentingan ekuiti terhadap tanah tersebut. Oleh yang demikian, plaintif merupakan pihak terkilan dengan adanya kaveat persendirian tersebut. Namun, plaintif mempunyai locus standi untuk memohon kepada mahkamah supaya kaveat tersebut dibatalkan (lihat perenggan 27–29).

(2) Berdasarkan perjanjian jualbeli, pihak defendan merupakan salah seorang benefisiari terhadap tanah tersebut. Seksyen 323(1)(b) KTN membenarkan kaveat persendirian dimasukkan oleh seseorang yang menuntut bahawa beliau secara benefisialnya berhak di bawah sebarang amanah yang melibatkan tanah tersebut. Memandangkan terdapat sebuah perjanjian jualbeli yang sah, pembeli berhak untuk memasukkan kaveat persendirian dengan tujuan hak beliau di bawah kontrak tersebut dilindungi dan membolehkannya mendakwa perlaksanaan spesifik perjanjian tersebut.

Maka, defendan mempunyai kepentingan hak ke atas tanah tersebut yang boleh dikaveatkan (lihat perenggan 33–35 dan 38).

(3) Oleh sebab isu sama ada perjanjian tersebut boleh dikuatkuasakan secara spesifik, dakwaan defendan menimbulkan persoalan serius untuk dibicarakan supaya defendan berhak menggunakan remedi ekuiti iaitu perlaksanaan spesifik (lihat perenggan 39).

(4) Untuk substratum dan hal perkara guaman sivil dikekalkan, adalah jelas bahawa isu imbangan keselesaan atau keadilan menyebelahi kaveat yang masih berada dalam pendaftaran sementara menunggu penyelesaian guaman sivil. Oleh yang demikian, didapati bahawa defendan mempunyai kepentingan hak ke atas tanah tersebut yang boleh dikaveatkan (lihat perenggan 40).]

Notes

For cases on caveats, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3015–3312.

Cases referred to

Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd [1996] 2 MLJ 12 (refd)
Chieng Hock Wong v Lim Guan Liong [2003] 6 MLJ 477 (refd)
Chor Phaik Har v Farlim Properties Sdn Bhd [1997] 3 MLJ 188 (refd)
Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212 (refd)
Inter-Continental Mining Co Sdn Bhd v Societe Des Etains De Bayas Tudjuh [1974] 1 MLJ 145 (refd)
Jasalam (M) Sdn Bhd v Wong Koon Yee [2000] 3 MLJ 115 (refd)
Kasivisvanathan Chettiar v Pereira [1976] 2 MLJ 110 (refd)
Kho Ah Soon v Duniaga Sdn Bhd [1996] 2 MLJ 181 (refd)
Kumpulan Sua Betong Sdn Bhd v Dataran Segar Sdn Bhd [1992] 1 MLJ 263 (refd)
Kundang Lakes Country Club Bhd v Garden Masters (M) Sdn Bhd [1999] 2 MLJ 537 (refd)
Luggage Distributors (M) Sdn Bhd v Tan Hor Teng [1995] 1 MLJ 719
Macon Engineers Sdn Bhd v Goh Hooi Yin [1996] 2 MLJ 53
Malite Sdn Bhd v Abdul Karim bin Gendut & Ors [1981] 2 MLJ 29
Medan Juta Sdn Bhd v Tsoi Ping Kwan [1996] 1 MLJ 864
Murugappa Chettiar Lakshmanan v Lee Teck Mook [1995] 1 MLJ 782
PB Securities Sdn Bhd v Autoways Holding Bhd [2000] 4 MLJ 417
Pembangunan Wang Kita Sdn Bhd v Fry-Fry Marketing Services Sdn Bhd [1998] 5 MLJ 709, [1998] 2 CLJ Supp 94
Registrar of Titles, Johore v Temenggong Securities Ltd [1976] 2 MLJ 44
Sabah Finance Bhd v Addspeed Enterprises Sdn Bhd & Ors [1995] 4 CLJ 645
Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors [1974] 2 MLJ 45
Tengku Mohamed Zairuddeen bin Tengku Mohamed Zaid v Wazuraiyah bte Mohamad; Wazuraiyah bte Mohamed v Megat Najmuddin & Ors [1988] 1 MLJ 27
United Malayan Banking Bhd lwn Chew Chee Sun [1996] 3 CLJ 533
Wu Shu Chen (Sole executrix of the estate of Goh Keng How, deceased) & Anor v Raja Zainal Abidin bin Raja Hussin [1997] 2 MLJ 487

Legislation referred to

Bankruptcy (Amendment) Act 2003 s 2
Limitation Act 1953 s 9
National Land Code ss 323, 323(1)(a), (b), 327(1), 349(1), (2), (3), 350

Anthony Joseph Param (Muthuvelu Param Rosdin & Co) for the plaintiff.
R Sivanesan (Sivanesan Ram & Co) for the defendant.

Low Hop Bing J:

APPLICATION

[1] This is the plaintiff's application in encl (3) for an order that the private caveat entered by the defendant *vide* presentation No 26/1999, Jilid 36, Folio 61 dated 23 February 1999 ('the private caveat') on the plaintiff's land held under GM 65, PT No 616, Mukim of Rasah, district of Seremban, ('the land') be removed under s 327(1) of the National Land Code and for damages to be assessed.

[2] For brevity and convenience, a reference to any section is a reference to that section in the National Land Code unless the context otherwise requires.

FACTUAL BACKGROUND

[3] The plaintiff was, prior to his being adjudicated as a bankrupt, the registered owner of the land.

[4] On 15 December 1976, the plaintiff and the defendant entered into a sale and purchase agreement ('the agreement') to buy 3450 sq ft of the land at a consideration of RM1,850 ('the amount') which has been duly paid by the defendant to the plaintiff.

[5] The plaintiff was adjudicated as a bankrupt on 8 October 1984, whereupon the defendant filed the proof of debt for the amount.

[6] On 23 January 1999, the plaintiff took steps to discharge himself as a bankrupt by settling all the debts including the amount but this was not accepted by the defendant on the ground that it was insufficient.

[7] On 12 November 1998, the Official Assignee (now known as the Director-General of Insolvency pursuant to s 2 of the Bankruptcy (Amendment) Act 2003 (Act A1197) with effect from 1 October 2003) ('DG of Insolvency') made a discharge order in favour of the plaintiff.

[8] The defendant entered the private caveat on 23 February 1999 and filed High Court Seremban Civil Suit No 22–187–2003 ('the civil suit') for, *inter alia*, specific performance against the plaintiff in October 2003.

[9] The land is presently in the name of the DG of Insolvency and not in the plaintiff's name.

Submission for plaintiff

[10] Mr Anthony Joseph Param, learned counsel for the plaintiff, submitted that under s 327(1) any person aggrieved by the existence of a private caveat may apply for its removal. Support for this contention was sought in *Wu Shu Chen (Sole executrix of the estate of Goh Keng How, deceased) & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487.

[11] He added that the defendant must prove that he has a caveatable interest under s 323, and that by filing proof of debt, the defendant has elected to make a monetary claim and not in relation to the land, as a result of which, upon the settlement of the amount by the plaintiff to the defendant, the defendant ceased to have caveatable interest, since the defendant could not approbate and reprobate, relying on *PB Securities Sdn Bhd v Autoways Holding Bhd* [2000] 4 MLJ 417; *Sabah Finance Bhd v Addspeed Enterprises Sdn Bhd & Ors* [1995] 4 CLJ 645; *United Malayan Banking Bhd lwn Chew Chee Sun* [1996] 3 CLJ 533.

[12] It was stressed that the defendant's monetary claim could give rise to no caveatable interest, on the basis of *Kundang Lakes Country Club Bhd v Garden Masters (M) Sdn Bhd* [1999] 2 MLJ 537.

[13] Further, he said that the plaintiff''s claim was barred by s 9 of the Limitation Act 1953, deriving support from *Wu Shu Chen* and that the plaintiff having accepted the amount did not become a bare trustee for the defendant. *Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd* [1996] 2 MLJ 12; *Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors* [1974] 2 MLJ 45 were cited in support.

[14] It was also argued that the defendant must show that on a balance of convenience, the private caveat should remain until final disposal of the civil suit, and that there was delay on the part of the defendant in filing the writ for, inter alia, specific performance against the plaintiff in October 2003, when the caveat was entered by him on 23 February 1999. *Registrar of Titles, Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44; *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212; and *Jasalam (M) Sdn Bhd v Wong Koon Yee* [2000] 3 MLJ 115 were relied upon.

Contention for defendant

[15] Mr R Sivanesan, learned counsel for the defendant, took the stand that as the land is now in the name of the DG of Insolvency, s 349(1), (2) and (3) and s 350 would apply so that the plaintiff has no locus standi. He relied on *Tengku Mohamed Zairuddeen bin Tengku Mohamed Zaid v Wazuraiyah bte Mohamad; Wazuraiyah bte Mohamed v Megat Najmuddin & Ors* [1988] 1 MLJ 27; *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188; and *Chieng Hock Wong v Lim Guan Liong* [2003] 6 MLJ 477.

[16] He stressed that the plaintiff is not an aggrieved person under s 327(1) but the DG of Insolvency is.

[17] Alternatively, it was contended that the defendant has a caveatable interest, pursuant to s 323(1)(a) and (b), relying on *Inter-Continental Mining Co Sdn Bhd v Societe Des Etains De Bayas Tudjuh* [1974] 1 MLJ 145.

[18] It was then argued that s 9 of the Limitation Act 1953 and the concept of bare trustee do not apply here, and a dozen cases were cited in support.

[19] He ended his submission by saying that on a balance of convenience, the status quo should be maintained until the final disposal of the civil suit. *Eng Mee Yong*, was relied on.

DECISION OF THE COURT

Issues for determination

[20] With the utmost respect to respective learned counsel, their submissions have travelled far and wide to cover some issues which were clearly irrelevant to the issues that arise for determination in the matter here, which is an application for removal of a private caveat.

[21] So far as I am concerned, on the facts alluded to above, the issues for determination are :

(1) whether the plaintiff has locus standi to file this application; and

(2) whether the private caveat should be removed.

Does plaintiff have locus standi?

[22] Since s 349(1), (2) and (3) and s 350 have been relied upon by the defendant to support the contention that the plaintiff has no locus standi, it is necessary to reproduce these provisions as follows:

349 Registration of Official Assignee

(1) Where the Official Assignee claims any land, or share or interest in land, under any written law for the time being in force relating to bankruptcy, he may apply to the Registrar under this section for the registration thereof in his name, and the Registrar shall give effect to the application by endorsing a memorial of the transmission on the register document of title to the land in question or, as the case may be, the land in which the share or interest in question subsists.

(2) Every such memorial shall be signed and sealed by the Registrar, and a copy thereof shall, if he is able to secure its production, be made by him on the issue document of title to the said land or, where the memorial relates to a lease or charge, on the duplicate thereof.

(3) No land, share or interest shall vest in the Official Assignee under any adjudication of bankruptcy, or order for administration in bankruptcy, until it has become registered in his name pursuant to this section.

350 Effect of disclaimer, discharge, etc

No disclaimer by the Official Assignee, and no order for the discharge of any bankrupt or the annulment of any adjudication of bankruptcy, shall operate to divest the Official Assignee of any land, share or interest registered in his name,

and any such land, share or interest shall continue vested in him until the registration of a transfer thereof, or of any vesting order made with respect thereto by the Court.

[23] Section 349 prescribes the procedure and the effect of registration of the DG of Insolvency in order to constitute the DG of Insolvency as the registered owner in the circumstances stipulated therein.

[24] The factual background as alluded to above reveals that the DG of Insolvency has already been registered as the owner of the land, pursuant to s 349(3) above. There is no dispute about that.

[25] Section 350 provides, *inter alia*, that no order for the discharge of any bankrupt or the annulment of any adjudication order of bankruptcy shall operate to divest the DG of Insolvency of any land. There is again no dispute about that, as the DG of Insolvency was quite content not to be present to challenge the right of the plaintiff to file the application herein.

[26] The fact that the DG of Insolvency is the registered owner of the land does not *ipso facto* preclude the right of other parties, such as non-registered owners, to apply for the removal of a private caveat, which is governed by s 327(1), where relevant, in the following words:

327 Removal of private caveats by the Court

(1) Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, …

[27] The expression 'any person aggrieved' is in my view sufficiently wide to include any person who is not the registered owner of the land, but must be a person aggrieved. In *Wu Shu Chen*, Mokhtar Sidin JCA, in delivering judgment of the Court of Appeal, explained that, at p 499:

… the word 'aggrieved' must be given its ordinary meaning. To be aggrieved means one is dissatisfied with or adversely affected by a wrongful act of someone. An aggrieved person is therefore a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body. The category of aggrieved persons is never closed.

[28] The plaintiff herein is the original registered owner whose land was vested in the DG of Insolvency on the ground of his being adjudicated as a bankrupt, but has not been re-registered as the owner, as a result of which, the land, at least in equity, is vested in the defendant: see *National Land Code: A Commentary* (1981) by Judith E Sihombing at p 330.

[29] In the circumstances, I have no hesitation in holding that the plaintiff is a person aggrieved by the existence of the private caveat under s 327(1) and therefore has the locus standi to apply to the court for an order for its removal. The defendant's contention that the plaintiff has no locus standi is misconceived and is hereby overruled.

Whether caveat should be removed?

[30] The answer to this issue depends on whether the defendant has a caveatable interest on the basis of the factual background as alluded to above.

In this respect, I am guided by the principles enunciated by the Court of Appeal in *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782; *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng* [1995] 1 MLJ 719 and *Wu Shu Chen*, which may be distilled as follows:

> In order to sustain a caveat, a caveator must first pass through three stages: (i) whether he has disclosed a caveatable interest in his application under s 323(1) of the Code; (ii) if he has established a caveatable interest, then, whether the evidence produced in support of his claim discloses a serious question to be tried; and (iii) if both questions are resolved in the caveator's favour, then whether the balance of convenience or justice, lies in favour of the caveat remaining on the register pending the disposal of his suit.

[31] See also *Medan Juta Sdn Bhd v Tsoi Ping Kwan* [1996] 1 MLJ 864; and *Pembangunan Wang Kita Sdn Bhd v Fry-Fry Marketing Services Sdn Bhd* [1998] 5 MLJ 709; [1998] 2 CLJ Supp 94 at p 104.

[32] The answer is found by examining the grounds of application for the entry of the private caveat as stated in the statutory declaration affirmed by the defendant, in particular para 2 thereof, to the effect that she was one of the beneficiaries to the land pursuant to the agreement.

[33] Section 323(1) provides for the person or body at whose instance a private caveat may be entered, *viz* any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest. From the wording of s 323(1)(a), it is my considered view that one of the following persons or bodies may enter a private caveat, viz:

(1) any person or body claiming title to any alienated land;

(2) any person or body claiming any registrable interest in any alienated land;

(3) any person or body claiming any right to such a title ie title to any alienated land; or

(4) any person or body claiming any right to such interest, ie registrable interest in any alienated land.

[34] In addition, s 323(1)(b) enables the entry of a caveat by any person claiming to be beneficially entitled under any trust affecting any such land.

[35] So long as there exists a valid agreement for the sale of land, the purchaser is entitled to lodge a caveat to protect his rights under the contract and to sue for specific performance of the agreement: *Macon Engineers Sdn Bhd v Goh Hooi Yin* [1976] 2 MLJ 53, at pp 54 and 55.

[36] In cases in which the removal of a private caveat is called into question, the subject matter to be protected is land. So where the caveat was entered by a purchaser pursuant to a sale and purchase of land, the caveat was allowed to remain: *Kasivisvanathan Chettiar v Pereira* [1976] 2 MLJ 110 (FC), and *Malite Sdn Bhd v Abdul Karim bin Gendut & Ors* [1981] 2 MLJ 29 (FC).

[37] The Federal Court in *Kumpulan Sua Betong Sdn Bhd v Dataran Segar Sdn Bhd* [1992] 1 MLJ 263 and the Federal Court in *Kho Ah Soon v Duniaga*

Sdn Bhd [1996] 2 MLJ 181 also emphasized that the essential subject matter therein was land.

[38] It is clear to me that the defendant has crossed the first hurdle ie that he has a caveatable interest under s 323(1)(a) or (b).

[39] That being the case, I shall proceed to consider whether the defendant has shown that on the affidavits filed, his claim raises a serious question to be tried. This would depend on whether the agreement is specifically enforceable in order to entitle the defendant to the equitable remedy of specific performance. This is indeed a serious bona fide question to be tried and it can only be resolved at the conclusion of the hearing of the civil suit by way of mature consideration of viva voce evidence after cross-examination and re-examination of the witnesses.

[40] Since the defendant has crossed these two hurdles, the third and final hurdle is for the defendant to show that the balance of convenience or justice lies in favour of the caveat remaining on the register pending the disposal of the civil suit. In my view, in order to maintain the substratum and subject matter of the civil suit, clearly the balance of convenience or justice lies in favour of the caveat remaining on the register pending the final disposal of the civil suit.

Conclusion

[41] I am unable to accept the plaintiff's contention that the private caveat should be removed. I hold that the plaintiff's application to remove the private caveat is devoid of merits and is hereby dismissed.

Other Grounds

[42] I do not feel the need to go into other grounds raised by the learned counsel for the parties herein, except to record my commendation for their efforts.

Costs

[43] As the defendant's contention on the plaintiff's lack of locus standi has been overruled, and the plaintiff's application to remove the private caveat has been dismissed, the position of the parties herein had been placed in equilibrium in so far as costs are concerned. I therefore order that the parties are to bear their own costs respectively.

Application for removal of caveat dismissed.

Reported by Jeyanthi Mala